

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

POROCEL INTERNATIONAL, LLC,	:	APPEAL NO. C-130427
	:	TRIAL NO. A-1106945
Plaintiff-Appellee,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
PETRON SCIENTECH, INC.,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

In a single assignment of error, defendant-appellant Petron Scientech, Inc., (“Petron”) appeals from the trial court’s denial of its Civ.R. 60(B) motion for relief from judgment. The action originated when plaintiff-appellee Porocel International, LLC, (“Porocel”) filed suit against Petron in September 2011, for a declaratory judgment related to a dispute involving Petron’s invoice for work connected to the Rosneft Catalyst regeneration project in Samara, Russia that Porocel had hoped to be selected to perform, and for breach-of-contract damages related to Petron’s alleged breach of an oral agreement concerning a bid that Petron had failed to present in Singapore. The lawsuit was related to an action filed in Colorado by Ron Zapletal, a principal of Porocel, against Petron and its principal and owner Yogendra Sarin (“Sarin”), and to an action subsequently filed by Petron in New Jersey by a New Jersey attorney against Porocel and Zapletal.

Petron, represented by an Ohio attorney, unsuccessfully moved to dismiss this lawsuit for lack of personal jurisdiction. Petron then answered and counterclaimed. On the same day that Petron answered, the trial court granted Ohio counsel's motion to withdraw as counsel for Petron. In accordance with the local rule and by order of the court, Ohio counsel notified Petron of his withdrawal and of the initial report hearing scheduled for June 14, 2012, while "strongly recommend[ing] that Petron have new counsel at that hearing."

Petron did not replace Ohio counsel until August 31, 2012, shortly after receiving notice that the trial court had granted summary judgment for Porocel on all claims and counterclaims, and had declared the rights of the parties. Porocel had moved for summary judgment on June 26, 2012, and had supported its motion with Sarin's affidavit, which had been filed in the New Jersey action, and the affidavit of William Kist, the vice president and chief financial officer of Porocel, who averred in part that Petron had orally agreed to present a bid at the Singapore meeting, but had failed to do so. Petron never opposed the motion.

At a hearing in July 2012 that Petron did not attend, the trial court found that Porocel had served the motion in accordance with the rules of Civil Procedure, although the service copy of the motion that Porocel sent to Petron, as well as two other packages of legal documents, had been returned and marked as "refused." The motion had also been sent by FedEx, but the package was returned to FedEx under suspicious circumstances. Petron had previously directed that all communications in the case be directed to the company and not New Jersey counsel.

In late September 2012, replacement Ohio counsel moved for relief from the judgment arguing, among other things, that Petron's failure to oppose the summary judgment motion was based on excusable neglect and that Petron had a meritorious

defense to Porocel's claims. In opposing the Civ.R. 60(B) motion, Porocel relied on multiple exhibits demonstrating that Petron had purposely attempted to avoid service of the motion and had failed to comply with discovery. At the hearing on the motion for relief from judgment, the trial court noted that Petron had "willfully refused to participate in the [legal] process." Subsequently, the trial court denied the Civ.R. 60(B) motion.

Although Petron moved for relief from judgment under Civ.R. 60(B)(1), (3) and (5), Petron's argument on appeal is limited to the issue of whether the trial court erred by failing to grant relief under Civ.R. 60(B)(1) due to excusable neglect. Under Civ.R. 60(B)(1), a trial court may relieve a party from a final judgment that resulted from demonstrated "excusable neglect," if the motion is timely filed and the movant has also demonstrated that he has a meritorious claim to present if relief is granted. *See GTE Automatic Elec., Inc. v. ARC Industries, Inc.*, 47 Ohio St.2d 146, 150-151, 351 N.E.2d 113 (1976).

Initially, we reject Petron's claim that the lack of specificity in the trial court's entry demonstrates that the trial court did not apply the correct analysis in denying its motion for relief from judgment on the grounds of "excusable neglect." Instead, we hold that the record as a whole, including the trial court's reference to Petron's willful[] refus[al] to participate in the [legal] process," reflects that the trial court could not characterize Petron's conduct as excusable neglect, and instead determined that the conduct was akin to inexcusable neglect, which has been defined as the " 'complete disregard for the judicial system.' " *See Kay v. Glassman*, 76 Ohio St.3d 18, 20, 665 N.E.2d 1102 (1996), quoting *GTE Automatic Elec.* at 153.

Further, we hold that Petron failed to demonstrate excusable neglect—an element necessary to its claim for relief under Civ.R. 60(B)(1). Although Petron claimed that it was unable to obtain replacement counsel on behalf of Petron because of Sarin's travel

schedule, Sarin's own affidavit demonstrated that he was in New Jersey for a significant period of time between Ohio counsel's withdrawal in late May and the trial court's grant of the summary-judgment motion in late August. Moreover, Sarin's intermittent absences did not excuse Petron's failure to respond to "judicial process." *See First Natl. Bank of Clermont Cty. v. Blanchard*, 1st Dist. Clermont No. 636, 1977 Ohio App. LEXIS 8482, *3 (June 8, 1977). And, the record supported the trial court's determination that Petron had willfully refused to participate in the proceedings, as demonstrated by Porocel's evidence.

This court will not disturb an order denying relief from judgment unless the trial court has abused its discretion by that ruling. *See Rose Chevrolet, Inc. v. Adams*, 36 Ohio St.3d 17, 20, 520 N.E.2d 564 (1988). We recognize that Porocel's motion for summary judgment was pending for only two months. But under the circumstances of this case, where the record supported the trial court's determination that Petron had willfully refused to participate in the proceedings, we cannot say that the trial court's denial of the Civ.R. 60(B) motion was an abuse of its discretion. Thus, we overrule the assignment of error.

Therefore, we affirm the trial court's judgment.

Further, a certified copy of this judgment entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

CUNNINGHAM, P.J., HILDEBRANDT and FISCHER, JJ.

To the clerk:

Enter upon the journal of the court on November 14, 2014
per order of the court _____.
Presiding Judge